IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 76 of 1986
INCOME TAX REFERENCE No 57 of 1988
and
INCOME TAX REFERENCE No 39 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

HEMENDRA FAMILY TRUST

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Appearance:
MR AKIL QURESHI with MR MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these reference at the instance of the revenue against the same assessee-Hemendra Family Trust, the following questions are referred for our opinion :-

ITR No. 76 of 1986 (A.Y. 1979-80)

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the assessee trust was not liable to be included in the individual income of Shri Hemendra Patel under section 60 of the Income-tax Act, 1961 ?

ITR No. 57 of 1988 (A.Y. 1980-81)

Whether on facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding the assessment in the hands of the Trust is required to be made on substantive basis treating the business as genuinely belonging to the trust and not to be trustee Hemendra Patel ?

ITR No. 39 of 1990 (A.Y. 1981-82)

1. Whether the Appellate Tribunal is right in law and on facts in directing the ITO to treat the assessment made by him on a protective basis to be substantive ?

2. Whether the Appellate Tribunal is right in law and on facts in directing the ITO to treat the business as genuinely belonging to the trust ?

2. At the hearing of the references, Mr Akil Kureshi, learned counsel for the revenue and Mr RK Patel, learned counsel for the assessee state that the question/s referred in these references are squarely covered by the decision of a Division Bench of this Court in K.T. Doctor vs. CIT, reported in (1980) 124 ITR 501 which was followed by another Division Bench of this Court in the case of CIT vs. Mangaldas Bechardas Family Trust, (1999) 236 ITR 574. It has also been informed that the appeal of the department against the decision in the K.T. Doctor (Supra) has been dismissed by the Supreme Court in the decision reported in (1998) 230 ITR

3. In the case of K.T. Doctor and Mangaldas Bechardas Family Trust (Supra), the Division Bench of this Court had an occasion to consider a similar question and it has been held that a trust can be a partner in a partnership firm and the income derived by that trust has to be substantively assessed in the hands of the trust. There cannot be any assessment on protective basis against the trustee in his individual capacity.

4. In the case of the same assessee, similar question of law raised for the earlier assessment years was answered in favour of the assessee relying on the decision in the case of K.T. Doctor vs. CIT reported in (1980) 124 ITR 501. A copy of the order of this Court passed on 13.11.1987 in the case of CIT vs. Hemendra Family Trust (the assessee herein) in Income Tax Reference No. 4 of 1984 has been placed before us for perusal.

5. It is also brought to our notice that in the case of this very assessee similar question was referred to this Court for its opinion in ITR No. 238 of 1985 and this Court has followed the aforesaid decisions in the case of this very assessee.

6. As the question posed before us has been squarely answered by this Court in two cases mentioned above, the questions have to be answered in favour of the assessee and against the revenue.

7. In view of the above discussion, we answer the questions referred to us in all these references in the affirmative i.e. in favour of the assessee and against the revenue.

The references accordingly stand disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

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